Calendar No. 703

98TH CONGRESS
2d Session

SENATE

REPORT
98–363

ESTABLISHING FEES FOR THE USE OF FEDERAL DAMS

MARCH 12, 1984.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1132]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1132) to amend the Federal Power Act to specify the annual charges for projects with licenses issued by the Federal Energy Regulatory Commission for the use of Federal dams and other structures, having considered the same, reports favorably thereon with an amendment in the nature of a substitute, and recommends that the bill (as amended) do pass.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

That subsection 10(e) of the Federal Power Act (16 U.S.C. 803(e)) is amended beginning with the last clause of the first sentence as follows: "but in no case shall a license be issued free of an annual charge for the development and utilization of power created by any Government dam. The amount of said annual charge shall not exceed one dollar per kilowatt of installed capacity and one-half mill per kilowatt-hour of energy produced. If such charge is less than maximum amount authorized, the Commission shall explain its reasons therefor. Except as provided in subsections 10(f) and 10(g) the annual charge provided for in this subsection shall be the only charge assessed by an agency of the United States and such charge shall be determined by the Commission. No charge, however, shall be assessed in those cases where the United States has heretofore entered into a contract with a licensee which provides that the licensee may build and own power plants utilizing irrigation facilities constructed by the United States and which further provides that all revenues from such power plants and from the use, sale, or the disposal of power therefrom shall be and remain the property of the licensee.".

SEC. 2. Subsection 10(g) of the Federal Power Act (16 U.S.C. 803(g)) is redesignated as subsection 10(h) and all subsequent subsections are redesignated accordingly.

SEC. 3. The Federal Power Act is amended by adding a new subsection 10(g) as follows:

"(g) (1) The appropriate agency of the United States, other than the Commission, shall assess and collect from the licensee the costs incurred by such

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agency for specific planning, design, operation, maintenance, inspection and administration resulting from the development and utilization of power at the Government dam by the licensee.

"(g)(2) The appropriate agency of the United States, other than the Commission, shall assess and collect from the licensee the original actual costs which remain outstanding and were incurred by such agency in constructing facilities for the purpose of power production which are utilized by the licensee in the development of power at the Government dam. Such costs shall be paid by the licensee in accordance with existing law, where applicable, or by written contract for a period of not more than forty years. Interest shall be assessed and accrue from the date a hydropower license is issued under the Act or the date such costs are incurred by the agency, whichever is later. The interest rate shall be determined at the time it begins to accrue by the Secretary of the Treasury on the basis of the computed average interest rate then payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for fifteen years from the date of issue. Construction costs may be repaid by the licensee within a shorter period of time than is provided by existing law or this subsection upon written agreement of the licensee and the appropriate agency. Funds so received by the agency shall be credited to the appropriate accounts as provided for in existing law.".

SEC. 4. The Federal Power Act is amended by adding a new subsection 10(k) as follows:

"(k) Every five years, the Commission shall review the appropriateness of the annual charge limitations provided for in subsection 10(e) and report to Congress concerning its recommendations thereon.".

SEC. 5. Section 17(a) of the Federal Power Act (16 U.S.C. 810(a)) is amended by modifying the last clause of the second sentence as follows:

a. strike the word "licenses" and insert in lieu thereof "licenses, other than those for the use of Bureau of Reclamation facilities," and

b. strike the words "United States." and insert in lieu thereof "United States; and 50 per centum of all charges whatsoever arising from all licenses hereunder authorizing in any manner the use of Bureau of Reclamation structures and facilities shall be paid into the Reclamation fund.".

PURPOSE

As ordered reported, S. 1132 would set a limit on the annual charge to be assessed a non-Federal entity for the use of a Government dam for the production of hydroelectric power. It also provides that the Federal Energy Regulatory Commission shall be the only Federal agency to assess such charge. In addition, the bill provides for payment of those costs to the United States resulting from such development, including the costs of any power facilities previously constructed by the United States which the non-Federal entity utilizes in the licensed project.

BACKGROUND AND NEED

The recently completed national hydroelectric power resources study conducted by the U.S. Army Corps of Engineers included examination of the potential for hydroelectric development at 516 Federal dams. Of the total, 168 already have hydroelectric generating facilities installed with a capacity of 32,000 megawatts. The potential capacity at the remaining 348 structures and the additional capacity at 55 of the structures where facilities already exist totals 13,500 megawatts. In terms of energy produced. there is a potential for 25 billion kilowatt-hours of electricity annually or the equivalent of 40 million barrels of oil each year.

An informal summary by the Commission of non-Federal development of hydroelectric power facilities at Federal dams indicates that

48 such licensees at Corps of Engineers dams and 20 at Bureau of Reclamation dams have been granted. There are presently pending before the Commission approximately 556 applications for non-Federal hydropower development at Federal facilities. Many of the existing licensees have successfully operated powerplant facilities at Federal dams for many years. However, in spite of the apparent interest and success of such non-Federal development, many would-be developers have expressed dismay at the complexity of the licensing process and the apparent overlap of authority between agencies of the Federal Government. The General Accounting Office, in a report issued September 26, 1980 [1], declared that "GAO found no consistent Federal policy concerning non-Federal development of hydropower at Federal dams."

Joint oversight hearings were held during the 97th Congress by the Subcommittee on Water and Power and the Subcommittee on Energy Regulation of the Senate Committee on Energy and Natural Resources to examine the probelms surrounding hydroelectric development and licensing procedures. During the course of the hearing, two specific problems were identified with respect to non-Federal hydroelectric development at Federal dams. First, developers need clear guidelines to follow in estimating the annual charges which the Government would levy for the use of a Federal dam for hydroelectric project; second, there is a need to clarify, in regard to Bureau of Reclamation dams, whether or not there could be a "double charge" for the use of the structure.

As introduced, S. 1132 sought to encourage the non-Federal development of hydroelectric resources at Federal dams by providing certainty with respect to the amount of the Federal charge for the use of the structure and also by clarifying which Federal agency would have the authority to establish and collect such a charge.

Legislative History

S. 1132 was introduced on April 21, 1983, and is sponsored by Senators McClure, Jackson, Murkowski, Symms, Wallop, Simpson, Gorton, Ford, and Hecht. Hearings were held before the Committee on July 25, 1983, at which time Commissioner Sheldon of the Federal Energy Regulatory Commission was generally supportive of the measure and the Department of the Interior and the Department of the Army were opposed to enactment.

A companion measure, H.R. 3660, which was introduced on July 26, 1983, is pending before the House Committee on Energy and Commerce.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in an open business session on February 28, 1984, by a vote of a quorum present recommended that the Senate pass S. 1132, if amended as described herein.

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[1] Non-Federal Development of Hydroelectric Resources at Federal Dams—Need To Establish a Clear Federal Policy, U.S. General Accounting Office, EMD–80–122, Sept. 26, 1980.

The rollcall vote on reporting the measure was 20 yeas and 0 nays as follows:

YEAS	NAYS
Mr. McClure	
Mr. Hatfield [1]	
Mr. Weicker [1]	
Mr. Domenici [1]	
Mr. Wallop [1]	
Mr. Warner	
Mr. Murkowski [1]	
Mr. Nickles	
Mr. Hecht	
Mr. Chafee	
Mr. Heinz	
Mr. Evans	
Mr. Johnston [1]	
Mr. Ford	
Mr. Metzenbaum	
Mr. Matsunaga [1]	
Mr. Melcher	
Mr. Tsongas [1]	
Mr. Bradley [1]	
Mr. Levin	

[1] Indicates voted by proxy.

Committee Amendment

The Committee adopted an amendment in the nature of a substitute. As amended, S. 1132 retains the basic elements of the original bill. It provides that the annual charge shall not exceed $1 per kilowatt of installed capacity and one-half mill per kilowatt-hour of energy produced. These charges will be the only annual charges (commonly referred to as "falling water charges") made by the United States and will be assessed by the Commission. The Committee amendment also provides that if the Commission charges less than the maximum amount authorized, it shall explain its reasons therefor.

Although the Committee amendment does not use the term "unreimbursed costs" as contained in the original text, it retains the requirement that the licensee pay the costs incurred by any Federal agency for specific planning, design, operation, maintenance, inspection and administration resulting from the development and utilization of power at the Government dam by the licensee. This reflects current practice and the various memoranda of understanding between the Commission and the respective agencies. This is clarified in section 3 of the Committee amendment.

In addition, the Committee amendment clarifies that the licensee shall pay the original actual costs which remain outstanding and were incurred by a Federal agency in constructing facilities for the purpose of power production which are utilized by the licensee in the development of power at the Government dam. For example, if a licensee intends to use a penstock on a Federal dam which was installed at Federal expense, the licensee would be required to pay to the United States the original actual costs of the penstock which remain outstanding. The

Committee amendment provides that such costs be paid by the licensee in accordance with existing law, where applicable, or by written contract for a period of not more than 40 years. The Committee amendment also establishes the interest rate to be applied, and provides that interest shall be assessed and accrue from the date a hydropower license is issued under the Act or the date such costs are incurred by a Federal agency, whichever is later.

The Bureau of Reclamation has informally advised the Committee that facilities for the purpose of power production have been installed at seven Bureau structures which are not utilized for power production. The Corps of Engineers has informally advised the Committee of 21 similar situations involving Corps dams.

The Committee amendment also provides that no annual charge shall be assessed in those instances where the United States has heretofore entered into a contract with a licensee which provides that the licensee may build and own powerplants utilizing irrigation facilities constructed by the United States and which further provides that all revenues from such powerplants and from the use, sale, or the disposal of power therefrom shall be and remain the property of the licensee. Where such a contract exists, this provides an exemption from the annual charge pursuant to section 10(e) of the Federal Power Act. Only two such contracts, the first involving the Columbia Basin Project in Washington State, and the other the Salt River Project in Arizona, were identified by the Administration. The Columbia Basin contract was entered into in 1968 and the Salt River Project contract in 1917.

Section 4 of the Committee amendment also includes a requirement that the Commission review and report to the Congress every 5 years its recommendations regarding the appropriateness of the annual charge limitations contained in subsection 10(e).

The Committee amendment does not alter the disposition of payments received in accordance with existing law other than providing that 50 percent of the charges collected by the Commission for licenses on Bureau of Reclamation dams be deposited in the Reclamation Fund.

The Committee intends that the requirements of S. 1132 apply to new licenses, and licenses for which the annual charge would otherwise be in the amount determined by the proposed rulemaking currently pending before the Commission.

Cost and Budgetary Considerations

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., March 5, 1984.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 1132, a bill to amend the Federal Power Act to specify annual charges for projects with licenses

issued by the Federal Energy Regulatory Commission for the use of Federal dams and other structures.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER,
Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

MARCH 5, 1984.

1. Bill number: S. 1132.

2. Bill title: A bill to amend the Federal Power Act to specify annual charges for projects with licenses issued by the Federal Energy Regulatory Commission for the use of Federal dams and other structures.

3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources, February 28, 1984.

4. Bill purpose: S. 1132 provides a statutory formula for the Federal Energy Regulatory Commission's (FERC) assessment of annual charges paid by operators of hydroelectric facilities involving federal dams or other structures. The bill's formula—one dollar per kilowatt of capacity and one-half mill per kilowatt-hour produced—replaces the case-by-case determinations made by FERC on the benefits to the licensees from the use of the federal facilities. The bill also confirms existing laws and policies requiring licensees to reimburse federal agencies for certain costs related to the hydroelectric facilities. Finally, the bill amends existing provisions governing the budgetary treatment of the proceeds from these charges.

5. Estimated cost to the Federal Government: The bill's formula for annual charges is expected to reduce future collections for such charges. The following table summarizes the projected budget impact of S. 1132 for 25 projects for which license fees have been set. There are about 60 other projects with license applications pending, but the impact of the bill on fees for these projects cannot be estimated at this time.

[By fiscal years, in millions of dollars]

	1984	1985	1986	1987	1988
Revenues	2	−8	−2	−2	−2
Estimated budget authority	−2	10	−6	.....	.....
Estimated outlays	−2	8	4	−6	.....
Net increase (+) or decrease (−) to the deficit	−4	16	6	−4	2

The budget impact of this bill falls within functions 270 and 300.

Basis of estimate.—Under current law, FERC sets the fee when the license is issued, and reviews and revises it every 20 years. FERC currently collects about $1.4 million each year from 16 projects that are paying an established annual charge assessment. The assessments for an additional nine projects recently have been revised, with potential collections estimated to total no more than $6.3 million per year. FERC has deferred the payments under these revised licenses, how-

ever, pending the completion of a proposed rulemaking on the fees. Enactment of this bill would yield an estimated $2.5 million from projects paying at the established rate, and $1.5 million from those in deferred status. Thus, with enactment of this bill, annual revenues from all of these projects would be reduced by about $3.7 million, assuming that the projects with deferred payments would have been required to pay the $6.3 million under current law. There are about 60 other projects with license applications pending. The impact of the bill on fees for these projects cannot be estimated at this time, because the determination of shared benefits under current policies have not been made.

It is assumed for this estimate that the bill would be enacted by May, 1984. If the enactment does not delay FERC's fiscal year 1984 billing cycle, FERC would collect about $1 million more in 1984 than under current law, because receipts are currently not expected from the deferred fees in 1984. This increase would be offset, however, by a $16.4 million reduction in collections in 1985, because, under current law, deferred charges from 1983 and 1984 are expected to be paid in 1985. Under S. 1132, these charges would be less and would be paid in 1984. These changes would affect both revenues and outlays. Under current law, half of the receipts are revenues to the Treasury, and the other half are offsetting receipts in function 270. The offsetting receipts would be available to the Corps of Engineers or the Bureau of Reclamation for obligation in the subsequent year for operations, maintenance, and other related activities. Thus, increases or decreases in receipts will result in corresponding charges in outlays, with a lag of about one year.

The bill's provisions regarding the assessment and collection of receipts for costs incurred by other federal agencies involved with these projects are not expected to have any budget impact. Both the Corps of Engineers and the Bureau of Reclamation recover these costs under current policies. Likewise, the provisions clarifying the budgetary disposition of the proceeds are not expected to have a net effect on the budget.

6. Estimated cost to State and local governments: None.
7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Kathy Gramp.
10. Estimate approved by:

C. G. Nuckols
(For James L. Blum,
Assistant Director for Budget Analysis).

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1132 as reported.

Passage of S. 1132 would have the effect of facilitating and simplifying the present process for securing a license to develop hydropower resources by a non-Federal entity at a Federal dam. No new informa-

tion is sought from potential licensees as a result of the requirements which would be imposed by S. 1132 and there would be no impact on personal privacy.

Other than the explanation required of the Commission in section 1 of the bill as amended and the report to Congress as required in section 5, little, if any, additional paperwork would result from the enactment of S. 1132.

Executive Communications

On June 13, 1983, the Committee requested legislative reports on S. 1132 from the Department of Agriculture, the Department of the Interior, the Federal Energy Regulatory Commission, the United States Army Corps of Engineers, and the Office of Management and Budget. The Committee received a legislative report from the Office of Management and Budget on August 24, 1983. The other legislative reports have not yet been received. In order to provide additional information for the benefit of the Senate, the statements presented at the July 25, 1983, hearing before the Committee by the Department of the Interior, the United States Army Corps of Engineers, and Commissioner Georgiana Sheldon of the Federal Energy Regulatory Commission are included in this report.

The letter from the Office of Management and Budget and the statements submitted at the hearing are set forth below:

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

AUG 22 1983

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
AUG 24 1983
WASHINGTON, D.C. 20510

Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request of June 13, 1983, for the views of the Office of Management and Budget on S. 1132, a bill "To amend the Federal Power Act to specify the annual charges for projects with licenses issued by the Federal Energy Regulatory Commission for the use of Federal dams and other structures."

The Office of Management and Budget concurs in the views of the Department of the Interior as expressed by Assistant Secretary Garrey E. Carruthers and of the Department of the Army as expressed by Major General John F. Wall, in their testimony of July 23, 1983, before the Water and Power Subcommittee. Accordingly, we oppose enactment of S. 1132.

Sincerely,

James M. Frey

James M. Frey
Assistant Director for
Legislative Reference

Statement of Garrey E. Carruthers, Assistant Secretary for Land and Water Resources, Department of the Interior before the Senate Subcommittee on Water and Power of the Committee on Energy and Natural Resources on S. 1132 - To Amend the Federal Power Act to Specify the Annual Charges for Projects with Licenses Issued by the Federal Energy Regulatory Commission for the Use of Federal Dams and Other Structures, July 25, 1983

Mr. Chairman, members of the Subcommittee, on behalf of the Department of the Interior, I am pleased to appear here today to comment on S. 1132. This bill would amend the Federal Power Act by specifying an annual charge of $1 per kilowatt of installed capacity and one-half mill per kilowatt hour of energy produced by hydroelectric projects with licenses issued by the Federal Energy Regulatory Commission for the development of hydroelectric power at a Federal dam or other structure.

In the past, there has been very little hydroelectric development by non-Federal entities at Bureau of Reclamation structures and facilities. However, there has been increasing interest in private development at Bureau of Reclamation sites and we want to encourage this interest. This legislation may have an impact on such development as it takes place in the future and on the fees collected from such development. It is important that we provide a reasonable return to the Federal Government for its investment. Therefore, we oppose S. 1132 because it appears to preclude this reasonable return.

We want to review closely the discussion today on this bill as well as comments submitted to the Federal Energy Regulatory Commission on a related proposed rulemaking and other possible alternative approaches.

Mr. Chairman, and Members of the Committee. I am Major General John F. Wall, Director of Civil Works for the Army Corps of Engineers, Office of the Chief of Engineers. I am pleased to be here to discuss, on behalf of the Department of the Army, S. 1132, a bill that would specify the annual charges for projects licensed by the Federal Energy Regulatory Commission for the use of Federal dams and other structures, including those of the Corps of Engineers.

I would like to commend this Committee's efforts and you, Mr. Chairman, in considering new guidelines for the assessment of charges which non-Federal F.E.R.C. licensees must pay for the use of Federal projects. New guidelines might help remove some of the uncertainty that currently faces potential hydroelectric developers and would facilitate their evaluation of economic feasibility.

Before I comment specifically on S. 1132, I would like to summarize the Corps' experience and current efforts in the development of hydroelectric power. I do so in an effort to provide relevant background information and to put my views of S. 1132 in perspective.

The Corps of Engineers is the Nation's largest single producer of hydroelectricity, accounting for about 30 percent of its hydroelectric energy, and about four percent of its total

electric energy. Under provisions of the Flood Control Act of 1944 and other acts, electric power and energy generated at Corps projects which is surplus to project needs is turned over to the Secretary of Energy for marketing. Power marketing agencies of the Department of Energy establish rates to recover the cost of producing and transmitting the power, including repayment with interest, of the allocated Federal investment over a fifty-year period. The authorization of hydroelectric facilities with Federal financing and non- Federal reimbursement over time was appropriate during the formative years of our nation's water resources development. However, with increasing Federal deficits and an emphasis on greater non-Federal participation in decision making, the traditional pattern of Federal financing is no longer appropriate. Therefore, this Administration has committed itself to supporting legislation and developing policies which maximize non-Federal participation in the selection and financing of future water resources development projects. I believe that any legislation affecting the licensing of non-Federal hydroelectric development must recognize this commitment and must not preclude negotiations with potential non-Federal participants in hydro-electric projects. I will address this in more detail later in my testimony.

We fully support the development of sound, justified hydroelectric facilities. Increased power capacity through the construction of new or enlarged facilities, if properly

implemented, would increase system efficiencies, reduce consumption of nonrenewable resources, and reduce our dependence on oil imports and provide a dependable, safe, and efficient source of energy in the future.

Regarding the development of hydropower by non-Federal interests through the FERC licensing procedures, I would like to make several points.

First, we encourage the development of hydroelectric facilities by non-Federal interests. Projects designed and financed in this manner assuredly are worthy financial investments and responsive to local and regional needs.

Second, non-Federal hydroelectric development at or affecting Federal projects must be accomplished in a manner that protects the public interest. In this regard, I must emphasize that safeguards such as those contained in the current Memorandum of Understanding between the Federal Energy Regulatory Commission and the Department of the Army must be protected. This MOU requires that hydroelectric development be compatible with authorized project purposes; that Congressionally authorized project functions not be significantly affected; that the Corps approve the design, construction, and operation of facilities which would affect the structural integrity or operational

adequacy of the structures; and that the Corps be reimbursed for all reasonable costs associated with its review, approval, and inspection activities, which is not a charge for the use of a Government facility.

Third, S. 1132 would provide for the assessment of annual charges to include "unreimbiursed" Federal costs as well as a specified annual charge. The bill is unclear on what is considered an "unreimbursed cost." In addition, the level of annual charge would be different than described with procedures for determining such charges that are currently being considered by the F.E.R.C. We believe it is reasonable that annual charges to the licensee result not only in a profit for the non-Federal investor but also in a return to the Government on its investment in a structure. In this matter, however, the F.E.R.C. is presently reviewing and receiving comments on a proposed rulemaking on this issue.

As mentioned earlier, no legislation should prohibit agreements between a Federal agency and a potential non-Federal interest on financial responsibilities associated with the construction of hydroelectric facilities at a Federal dam. For instance, considerable cost savings to the licensee can be realized in the concurrent construction of a power plant and a Federal structure. Federal construction agencies should not be

precluded from sharing these savings as well as recovering a portion of joint project costs, as would be the case with Federal construction of the power facility. The annual charge established by the bill does not recognize the variation in savings possible at different locations, nor does it recognize the joint project costs which could reasonably be allocated to hydropower. We would object to enactment of S.1132 for these reasons and because it places a ceiling on the charges that could be placed on the use of Federal Facilities.

This concludes my statement, Mr. Chairman. I will be glad to respond to any questions you may have.

STATEMENT OF

GEORGIANA H. SHELDON, COMMISSIONER

FEDERAL ENERGY REGULATORY COMMISSION

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to appear before you to discuss S. 1132, a bill to specify the annual charges which the Federal Energy Regulatory Commission may impose on hydropower licensees for the use of Federal dams and other structures. At the outset I should state that this testimony represents my own views and not necessarily those of the Commission as a whole.

I should also note that on March 31 of this year the Commission issued a proposed rule which would establish a generic methodology for determining annual charges for hydro licensees under section 10(e) of the Federal Power Act. The proposed rule, if adopted by the Commission, would replace the current case-by-case approach to determining the level of annual charges. The comment period for this rulemaking proposal expired on July 15. Because the Commission must carefully review the comments before making a final decision in this matter, I am not in a position to discuss the merits of the proposed rule in the course of today's testimony. My remarks this afternoon relate exclusively to S. 1132 and are not intended in any way to address the Commission's pending rulemaking.

I want to commend the sponsors of S. 1132 for their efforts to encourage responsible hydroelectric power development. I believe that the proposed legislation would significantly reduce the complexities and uncertainties which currently confront those seeking to develop the hydro potential of Federal dams and other government structures. I share the goals of this legislation and believe that, with certain modifications, it will go a long way toward relieving uncertainty.

As you are undoubtedly aware, the Commission on which I serve is strongly committed to fulfilling its statutory responsibilities with respect to hydro development. We have taken a number of steps in the past several years to streamline our regulatory process in order to reduce red tape for developers while ensuring that environmental and safety concerns are fully accommodated. Our licensing procedures have been revised and simplified. We have also established an exemption program which permits small-scale projects to proceed without the need for compliance with complex, time-consuming licensing requirements.

The legislation now pending before this Committee is designed to address another area of concern experienced by prospective hydro developers at government dams: uncertainty with respect to the economic viability of proposed projects due to unpredictable Federal charges. S. 1132 seeks to resolve that uncertainty in two ways: by setting a maximum ceiling on the level of annual charges that can be imposed by FERC for hydro development at government dams and by providing that such charges shall be the only ones assessed by any agency of the United States for that purpose.

The approach recommended by S. 1132 is a sound one, and I would suggest only a few areas where clarification may assist the Commission in carrying out its purposes.

First is the matter of "unreimbursed cost" referenced in line 1 on page 2 of the bill. The maximum ceiling on annual charges proposed by S. 1132 would involve two components: (1) the actual unreimbursed cost to the United States, if any, resulting from the construction, operation and maintenance of the licensee's project works; and (2) an annual rental charge not to exceed $1 per kilowatt of installed capacity and one-half mill per kilowatt-hour of energy produced.

It is unclear precisely what is intended by the term "unreimbursed cost" in the bill as introduced. For example, without clarification it would be difficult for the Commission to determine whether Congress intended the term to include the cost of facilities that are not involved with power production, such as irrigation canals.

The need for defining "unreimbursed cost" is highlighted by the problems which could arise for the Commission in setting annual charges in those cases where licensees at government dams have entered into separate agreements with the Federal agency which owns the dam, usually the Bureau of Reclamation or the Army Corps of Engineers. Such agreements frequently specify that the licensee will pay for some of the construction, operation and maintenance costs incurred by the Bureau or the Corps.

I assume that such contracts provide for the necessary reimbursement of designated costs to the United States. If this assumption is correct, then I am not sure what legitimate additional "unreimbursed costs" the Commission would be required to recover under the provisions S. 1132.

I also assume that these contracts have their own enforcement mechanisms to cover a variety of situations in which nonperformance could occur. If this assumption is wrong, then the bill may have the effect of requiring the Commission, through its power to assess annual charges, to act as an enforcement agent for the Bureau of Reclamation or the Army Corps of Engineers. This could occur either in the case where a licensee was not meeting its contractual payments or where a given contract did not, for some reason, cover all of the costs of the United States which should be reimbursed. In either case, the Commission might be asked by the Bureau or the Corps to collect some of their costs from the licensee.

I believe that the Commission should not be placed in the awkward position of serving as an unnamed third party to contractual arrangements between private developers and other Federal agencies. This situation could be avoided by providing a clearer definition of "unreimbursed cost."

In addition to providing for the recovery of unreimbursed costs, the bill directs the Commission to collect annual rental charges of up to $1 per kilowatt of installed capacity and one-half mill per kilowatt-hour of energy produced. In the interest of streamlining the Commission's administration of the proposed legislation, the Committee may want to consider

establishing a fixed charge, rather than a ceiling, for rental charges associated with capacity and the amount of electricity generated.

Section 10(e) of the Federal Power Act sets several criteria governing the Commission's determination of annual charges for the use of government dams. The principal criteria are that the charge must be reasonable, must recompense the government for the use of its property, and must seek to avoid increasing power costs to consumers. In the City of Vanceburg decision [571 F.2d 630 (D.C. Cir. 1977)], the Commission has further construed section 10(e) to mean that annual charges should also be proportional to the value of the benefit conferred on the licensee. As presently worded, S. 1132 can be interpreted as requiring the Commission to develop a methodology for determining annual charges which meets all of the section 10(e) criteria listed above while, at the same time, yielding charges that do not exceed the specified ceiling. The administrative difficulties in making such a determination could result in delays unintended by the authors of the proposed legislation.

I believe that it would be in the interest of administrative efficiency to modify S. 1132 so that an exact level of rental charges is specified by Congress. The Commission could be given the discretion to defer the payment of such charges in appropriate cases where a showing of financial difficulty could be made by the licensee.

The Committee may find it helpful to review the comparison chart accompanying my testimony. The chart indicates the level of charges currently assessed under a select group of project licenses and compares this amount with the charges which would be imposed if the maximum ceiling proposed by S. 1132 were adopted.

Finally, Mr. Chairman, I suggest one additional modification to S. 1132 which would remove a lingering problem with respect to the jurisdictional overlap between Federal agencies which the bill seeks to remedy.

I endorse the policy embodied in the pending measure that non-Federal licensees should be subject to only one charge for the use of government dams. The bill as drafted properly ensures that the Commission, which already has plenary licensing authority over private hydro development at government dams, will be the only agency to determine the charge for the use of those dams.

If this goal is to be realized to the maximum extent possible, the Committee may want to address the provision of section 10(e) which gives the Secretary of Interior power to approve the Commission's determination of annual charges at reclamation dams. I believe that potential hydro developers would be given an added degree of certainty with respect to annual charges if this portion of section 10(e) were deleted. Of course, I fully recognize the continuing right of the Interior Secretary to intervene in Commission proceedings and to make his recommendations on the appropriate level of annual charges known to the Commission. This right was expressly affirmed by the United States Court of Appeals for the D.C. Circuit in Montana Power Co. v. FPC [459 F.2d 863 (February 17, 1972)]. The elimination of the approval clause in section 10(e) would not, in my judgment, in any way affect the Secretary's rights since he would remain an "interested party" in applicable licensing proceedings.

In closing, Mr. Chairman, I want to reiterate my support for the goals envisioned by S. 1132. I will be happy to provide whatever assistance I can in the course of your further consideration of its provisions.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1132, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Federal Power Act

The Federal Water Power Act is the Act of June 10, 1920, ch. 285, 41 Stat. 1063, entitled "An Act to create a Federal Power Commission; to provide for the improvement of navigation; the development of water power; the use of the public lands in relation thereto, and to repeal section 18 of the Rivers and Harbor Appropriation Act, approved August 8, 1917, and for other purposes." Section 212 of the Act of August 26, 1935, 49 Stat. 847, provides that the Federal Water Power Act, as amended, shall constitute Part I of an expanded act; and section 213 of the 1935 Act, 49 Stat. 847–63, adds Part II, relating to the regulation of electrical utility companies engaged in interstate commerce, and Part III, dealing with licenses and administrative matters. This expanded act is given the short title of Federal Power Act, 49 Stat. 863.

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Sec. 10. All licenses issued under this Part shall be on the following conditions:

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(e) That the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of this Part; for recompensing it for the use, occupancy, and enjoyment of its lands or other property; and for the expropriation to the Government of excessive profit until the respective States shall make provision for preventing excessive profit or for the expropriation thereof to themselves, or until the period of amortization as herein provided is reached, and in fixing such charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges, and any such charges may be adjusted from time to time by the Commission as conditions may require: *Provided*, That when licenses are issued involving the use of Government dams or other structures owned by the United States or tribal lands embraced within Indian reservations the Commission shall, subject to the approval of the Secretary of the Interior in the case of such dams or structures in reclamation projects and, in the case of such tribal lands, subject to the approval of the Indian tribe having jurisdiction of such lands as provided in section 16 of the Act of June 18, 1934 (48 Stat. 984), fix a

reasonable annual charge for the use thereof, and such charges may with like approval be readjusted by the Commission at the end of twenty years after the project is available for service and at periods of not less than ten years thereafter upon notice and opportunity for hearing: *Provided further*, That licenses for the development, transmission, or distribution of power by States or municipalities shall be issued and enjoyed without charge to the extent such power is sold to the public without profit or is used by such State or municipality for State or municipal purposes, except that as to projects constructed or to be constructed by States or municipalities primarily designed to provide or improve navigation, licenses therefor shall be issued without charge; and that licenses for the development, transmission, or distribution of power for domestic, mining, or other beneficial use in projects of not more than two thousand horsepower installed capacity may be issued without charge, except on tribal lands within Indian reservations; [but in no case shall a license be issued free of charge for the development and utilization of power created by any Government dam and that the amount charged therefor in any license shall be such as determined by the Commission.] *but in no case shall a license be issued free of an annual charge for the development and utilization of power created by any Government dam. The amount of said annual charge shall not exceed one dollar per kilowatt of installed capacity and one-half mill per kilowatt-hour of energy produced. If such charge is less than the maximum amount authorized, the Commission shall explain its reasons therefor. Except as provided in subsections 10(f) and 10(g) the annual charge provided for in this subsection shall be the only charge assessed by an agency of the United States and such charge shall be determined by the Commission. No charge, however, shall be assessed in those cases where the United States has heretofore entered into a contract with a licensee which provides that the licensee may build and own power plants utilizing irrigation facilities constructed by the United States and which further provides that all revenues from such power plants and from the use, sale, or the disposal of power therefrom shall be and remain the property of the licensee.* In the event an overpayment of any charge due under this section shall be made by a licensee, the Commission is authorized to allow a credit for such overpayment when charges are due for any subsequent period.

(f) That whenever any licensee hereunder is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Commission shall require as a condition of the license that the licensee so benefited shall reimburse the owner of such reservoir or other improvements for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission may deem equitable. The proportion of such charges to be paid by any licensee shall be determined by the Commission. The licensees or permittees affected shall pay to the United States the cost of making such determination as fixed by the Commission.

Whenever such reservoir or other improvement is constructed by the United States the Commission shall assess similar charges against any licensee directly benefited thereby, and any amount so assessed shall be

paid into the Treasury of the United States, to be reserved and appropriated as a part of the special fund for headwater improvements as provided in section 17 hereof.

Whenever any power project not under license is benefited by the construction work of a licensee or permittee, the United States or any agency thereof, the Commission, after notice to the owner or owners of such unlicensed project, shall determine and fix a reasonable and equitable annual charge to be paid to the licensee or permittee on account of such benefits, or to the United States if it be the owner of such headwater improvement.

10(g)(1) The appropriate agency of the United States, other than the Commission, shall assess and collect from the licensee the costs incurred by such agency for specific planning, design, operation, maintenance, inspection and administration resulting from the development and utilization of power at the Government dam by the licensee.

(g)(2) The appropriate agency of the United States, other than the Commission, shall assess and collect from the licensee the original actual costs which remain outstanding and were incurred by such agency in constructing facilities for the purpose of power production which are utilized by the licensee in the development of power at the Government dam. Such costs shall be paid by the licensee in accordance with existing law, where applicable, or by written contract for a period of not more than forty years. Interest shall be assessed and accrue from the date a hydropower license is issued under the Act or the date such costs are incurred by the agency, whichever is later. The interest rate shall be determined at the time it begins to accrue by the Secretary of the Treasury on the basis of the computed average interest rate then payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for fifteen years from the date of issue. Construction costs may be repaid by the licensee within a shorter period of time than is provided by existing law or this subsection upon written agreement of the licensee and the appropriate agency. Funds so received by the agency shall be credited to the appropriate accounts as provided for in existing law.

[(g)](*h*) Such other conditions not inconsistent with the provisions of this Act as the commission may require.

[(h)](*i*) That combinations, agreements, arrangements, or understandings, express or implied, to limit the output of electrical energy, to restrain trade, or to fix, maintain, or increase prices for electrical energy or service are hereby prohibited.

[(i)](*j*) In issuing licenses for a minor part only of a complete project, or for a complete project of not more than two thousand horsepower installed capacity, the Commission may in its discretion waive such conditions, provisions, and requirements of this part except the license period of fifty years, as it may deem to be to the public interest to waive under the circumstances: *Provided*, That the provisions hereof shall not apply to annual charges for use of lands within Indian reservations.

(k) Every five years, the Commission shall review the appropriateness of the annual charge limitations provided for in subsection 10(e) and report to Congress concerning its recommendations thereon.

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SEC. 17. (a) All proceeds from any Indian reservation shall be placed to the credit of the Indians of such reservation. All other charges arising from licenses hereunder, except charges fixed by the Commission for the purpose of reimbursing the United States for the costs of administration of this part, shall be paid into the Treasury of the United States, subject to the following distribution: 12½ per centum thereof is hereby appropriated to be paid into the Treasury of the United States and credited to "Miscellaneous receipts"; 50 per centum of the charges arising from licenses hereunder for the occupancy and use of public lands and national forests shall be paid into, reserved, and appropriated as a part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902; and 37½ per centum of the charges arising from licenses hereunder for the occupancy and use of national forests and public lands from development within the boundaries of any State shall be paid by the Secretary of the Treasury to such State; and 50 per centum of the charges arising from all other [licenses] *licenses, other than those for the use of Bureau of Reclamation facilities*, hereunder is reserved and appropriated as a special fund in the Treasury to be expended under the direction of the Secretary of the Army in the maintenance and operation of dams and other navigation structures owned by the United States or in the construction, maintenance, or operation of headwater or other improvements of navigable waters of the [United States] *United States; and 50 per centum of all charges whatsoever arising from all licenses hereunder authorizing in any manner the use of Bureau of Reclamation structures and facilities shall be paid into the Reclamation fund.* The proceeds of charges made by the Commission for the purpose of reimbursing the United States for the costs of the administration of this part shall be paid into the Treasury of the United States and credited to miscellaneous receipts.

(b) In case of delinquency on the part of any licensee in the payment of annual charges a penalty of 5 per centum of the total amount so delinquent may be added to the total charges which shall apply for the first month or part of month so delinquent with an additional penalty of 3 per centum for each subsequent month until the total of the charges and penalties are paid or until the license is canceled and the charges and penalties satisfied in accordance with law.

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